

Note from the Field

“Identity Theft” and DD Form 214: Georgia’s Legislative Solution a Model for Others?

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As legal assistance practitioners are well aware, the issue of “identity theft”¹ has become a major concern for legal assistance clients.² Individuals must be especially protective of their social security numbers (SSN), as these unique numbers are prime targets for identity thieves.³

Department of Defense (DD) Form 214⁴ contains a wealth of information documenting a soldier’s military service, to include his characterization of discharge—which is of particular interest to prospective employers. The DD Form 214 also contains sensitive information, such as the soldier’s SSN.⁵ At one time, retirement service offices and legal assistance practitioners advised retirees to register a copy of their DD Form 214 at the local county courthouse because it is the linchpin document for substantiating one’s military service and eligibility for benefits. Registering the document with the court made the document a public record, which facilitated replacement of the document if the original was lost.⁶

Times and trends have changed, however, and privacy concerns, including identity theft, have prompted retirement ser-

vices offices and legal assistance attorneys to cease issuing such guidance.⁷ While the military should undertake a public information campaign to discourage future public recordings,⁸ this will not rectify the problem of untold number of DD Form 214s already publicly recorded throughout the country.

Unfortunately, a publicly recorded document may not simply be “unrecorded.” Redaction or retraction of a public document requires action by a court. In consideration of court action on behalf of legal assistance clients, attorneys from the Fort Benning legal assistance office brainstormed issues related to the retraction or redaction of certain information from a publicly recorded DD Form 214. In counterbalance to individual privacy concerns, two issues sprang to mind. First, if the DD Form 214 were redacted, what information would be removed, and if that information was removed, would the publicly recorded document still serve a purpose?⁹ Second, if the DD Form 214 was retracted, what future court actions might result?¹⁰

One proposed solution was for legal assistance personnel to draft a motion to address these concerns. Such a motion would then be tested in the Muscogee County courts, located adjacent to Fort Benning. Another proposed solution was for legal assistance personnel to coordinate with Georgia state representatives to draft proposed legislation addressing their constituents’ privacy concerns.

1. The National Consumer Law Center states that “[i]dentity theft, also called name theft, identity fraud, or true name fraud, refers to an imposter’s use of key items of another person’s identity—such as name, social security number, credit card number, or PIN, to obtain funds, credit, goods, services, or other benefits. NATIONAL CONSUMER LAW CENTER, FAIR CREDIT REPORTING ACT § 7.6.11 (4th ed. 1998).

2. *Id.* (reporting that an estimated 2000 cases of identity theft occur each week); Staff Sergeant Marcia Triggs, *Scams Target Veterans for Identity Theft*, ARMY NEWS SERVICE (January 22, 2002), available at <http://www.dtic.mil/armylink/news/Jan2002/a20020122dd214.html> (stating that the Federal Trade Commission reported “between 600,000 and 700,000 cases of identity theft . . . in 2000”). Veterans are at particular risk. See Triggs, *supra*.

3. See Triggs, *supra* note 2.

4. U.S. Dep’t of Defense, Form 214, Certificate of Discharge (1 Nov. 1988).

5. See *id.*

6. Triggs, *supra* note 2. Additionally, a fire at the National Personnel Records Center (Military Personnel Records) on 12 July 1973 destroyed between sixteen to eighteen million official military personnel files. As a result of that fire, eighty percent of the records of Army personnel discharged between 1 November 1912 and 1 January 1960 were lost. Since there were no duplicates, microfilm copies, or indexes, the information was irrevocably lost—unless it could be reconstructed using other sources. National Archives and Records Administration, *The 1973 Fire*, at <http://www.nara.gov/regional/mpfire.html> (last visited Apr. 22, 2002).

7. Triggs, *supra* note 2. There are still some holdouts. See, e.g., The American War Library, *Public Posting and Preserving Your DD-214*, at <http://members.aol.com/forvets/dd214sav.htm> (last visited Apr. 22, 2002).

8. The installation or command’s legal assistance office, retirement services, or both, can do this.

9. For example, if the SSN was redacted, would the document still contain enough information to verify the retiree’s identity?

10. *Id.* For example, if the prior trend was to publicly record such documents, and the current trend is to remove them, might the pendulum swing back? If independent measures can alleviate the privacy concerns (for example, credit card applications no longer requiring a SSN), would the individuals who first recorded their DD Form 214s, then redacted them, return to the courts to once again publicly record them?

Before the Fort Benning legal assistance office could implement either plan, the Georgia government acted on this issue. Legislation signed by the Governor of Georgia on 13 May 2002 provides that certain military records recorded in the superior courts are not subject to public inspection, and establishes confidential treatment of such records, procedures for review and copying them, and penalties for violations of these provisions.¹¹

Georgia's legislation serves to strictly limit access to the publicly recorded DD Form 214. Legal assistance offices in

jurisdictions without similar protections may consider Georgia's model as a template, taking into consideration the issues contemplated above and those issues unique to their jurisdiction. Proposing such legislation may not only benefit Army legal assistance clients, but can also serve as a valuable exercise in attorney professional development.¹²

11. GA. CODE ANN. § 15-6-72(c) (2002) (codifying House Bill 1203).

12. One should also seek to engage National Guard and reserve component resources in any such effort. Many such personnel have legislative positions or connections in their civilian capacities, and can be instrumental in the process.